



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0086]**

**RIN 1625-AA00**

### **Safety Zone; Pensacola Bay, Pensacola, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters on Pensacola Bay within 100 yards of each vessel participating in the Tall Ships Pensacola marine event and parade in Pensacola, FL and within 100 yards of the Port of Pensacola for the duration of the marine event and parade. This rule is necessary to provide for the safety of life and property on these navigable waters during the Tall Ships Pensacola marine event. This rule will prohibit persons and vessels from entering the safety zone unless specifically authorized by the Captain of the Port Sector Mobile (COTP) or a designated representative.

**DATES:** This rule is effective from 8 a.m. on April 12, 2018 through 8 p.m. on April 15, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0086 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Kyle D. Berry, Sector Mobile, Waterways Management Division, U.S. Coast Guard; telephone 251-441-5940, e-mail Kyle.D.Berry@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Mobile
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The sponsor for the Tall Ships Pensacola marine event submitted an application for a marine event permit for the event that will take place from 8 a.m. on April 12, 2018 through 8 p.m. on April 15, 2018. The Captain of the Port Sector Mobile (COTP) has determined a safety zone is necessary to protect the public from the potential hazards associated with the tall ships during the organized parade, public tours, and sailings of these tall ships. In response, on February 22, 2018 the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Pensacola Bay, Pensacola, FL (83 FR 7644). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this Tall Ships Pensacola marine event. During the comment period that ended March 9, 2018, we received zero comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. Delaying the effective date of this rule would be impracticable because immediate action

is needed to respond to the potential safety hazards associated with the Tall Ships Pensacola Marine Event.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards associated with the tall ships during the organized parade, public tours, and sailings of these tall ships on April 12, 2018 through April 15, 2018 will be a safety concern for any vessels or persons in the vicinity of waters on Pensacola Bay within 100 yards of each vessel participating in the Tall Ships Pensacola marine event and parade in Pensacola, FL and within 100 yards of the Port of Pensacola for the duration of the marine event and parade. This rule is needed to protect the public, mariners, and vessels from the potential hazards associated with the tall ships during the organized parade, public tours, and sailings of these tall ships.

### **IV. Discussion of the Rule**

As noted above, we received no comments on our NPRM published on February 22, 2018. There are no substantive changes to the regulatory text of this rule from the proposed NPRM. There is one technical amendment in the regulatory text of this rule, which corrects the paragraph numbering in §165.T08-0086(c).

This rule establishes a temporary safety zone on Pensacola Bay within 100 yards of each vessel participating in the Tall Ships Pensacola marine event from 8 a.m. on April 12, 2018 through 8 p.m. on April 15, 2018, covering each vessel from when the vessel arrives at Pensacola, FL, when moored at the Port of Pensacola, 30°24'07.2"N, 87°12'44.7"W, when underway in parade from position 30°24'07.2"N, 87°12'44.7"W to 30°19'52.6"N, 87°18'31.5"W, and when the vessel departs Pensacola, FL. The Coast

Guard also is establishing a temporary safety zone on Pensacola Bay within 100 yards of the Port of Pensacola for the duration of the Tall Ships Pensacola marine event from 8 a.m. on April 12, 2018 through 8 p.m. on April 15, 2018. This rule is needed to provide for the safety of life and property on these navigable waters during the Tall Ship Pensacola marine event. This rule restricts transit into, through, and within the zone unless specifically authorized by the COTP or a designated representative. No vessel or person is permitted to enter the zone without obtaining permission from the COTP or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM". All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol vessels" consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP or a designated representative to patrol the zone.

Spectator vessels desiring to transit the zone may do so only with prior approval of the COTP or a designated representative and when so directed by that officer must be operated at a minimum safe navigation speed in a manner which will not endanger any other vessels. No spectator vessel shall anchor, block, loiter, or impede the through transit of official patrol vessels in the zone during the effective dates and times, unless cleared for entry by or through the COTP or a designated representative. Any spectator vessel may anchor outside the zone, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the zone in such

a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the zone and remain moored through the duration of the event.

The COTP or a designated representative may forbid and control the movement of all vessels in the zone. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the zone, citation for failure to comply, or both.

The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative will terminate enforcement of the safety zone at the conclusion of the event.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protectors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location, and duration of the proposed rulemaking. This safety zone will take place on a small area of Pensacola Bay, lasting for only four days from April 12, 2018 through April 15, 2018. Additionally, the Coast Guard will issue Broadcast Notices to Mariners via VHF-FM marine channel 16 about the safety zone so that waterway users may plan accordingly for transits during this restriction, and the rule will allow vessels to seek permission from the COTP or a designated representative to enter the zone.

#### B. Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has

implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone on Pensacola Bay within 100 yards of the Port of Pensacola and within 100 yards of any vessel participating in the Tall Ships Pensacola marine event and parade from April 12, 2018 through April 15, 2018. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are

asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

**List of Subjects 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1; 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add §165.T08-0086 to read as follows:

§ 165.T08-0086 Safety Zone; Pensacola Bay, Pensacola, FL.

(a) Location. The following area is a safety zone: All navigable waters of the Pensacola Bay within 100 yards of each vessel participating in the Tall Ships Pensacola marine event and parade and within 100 yards of the Port of Pensacola, 30°24'07.2"N, 87°12'44.7"W, Pensacola, FL.

(b) Enforcement period. This section is effective from 8 a.m. on April 12, 2018 through 8 p.m. on April 15, 2018.

(c) Regulations. (1) In accordance with the general regulations in § 165.23, entry into, transiting through, or exiting from this area is prohibited unless authorized by

the Captain of the Port Sector Mobile (COTP) or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign “PATCOM”.

(2) Persons or vessels seeking to enter into or transit through the zone must request permission from the COTP or a designated representative. They may be contacted on VHF-FM channels 16 or by telephone at 251-441-5976.

(3) If permission is granted, all persons and vessels must comply with the instructions of the COTP or designated representative.

(4) All persons and vessels not registered with the event sponsor as participants or official patrol vessels are considered spectators. The “official patrol vessels” consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP to patrol the regulated area.

(5) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the COTP or a designated representative and when so directed by that officer will be operated at a minimum safe navigation speed in a manner that will not endanger participants in the zone or any other vessels.

(6) No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(7) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere

with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(8) The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(9) The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(10) The Patrol Commander will terminate enforcement of the safety zone at the conclusion of the event.

(d) Informational broadcasts. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of the enforcement period for the temporary safety zone as well as any changes in the planned schedule.

Dated: March 20, 2018.

M.R. MCLELLAN,  
Captain, U. S. Coast Guard,  
Captain of the Port Sector Mobile.

[FR Doc. 2018-06127 Filed: 3/27/2018 8:45 am; Publication Date: 3/28/2018]